



Disability Rights online News

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Disability Rights Online News

is a bi-monthly update about the Civil Rights Division's activities in the area of disability rights. The Division enforces laws prohibiting discrimination based on disability in employment, housing, access to businesses serving the public, access to government programs and services, including voting and public transportation, and unconstitutional conditions in institutions of confinement.

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RV RESORT PAYS \$46,000 TO SETTLE DISCRIMINATION SUIT

On January 19, 2010, the federal court in Mobile, Alabama, approved a consent decree settling the Department's ADA lawsuit against the Wales West RV Resort in Silverhill, Alabama. (See previous article in issue 33.) Wales West is a resort for families with RVs (recreational vehicles) located near Alabama's Gulf of Mexico beaches. It includes a three-acre lake, nature trails, gardens, an indoor pool, a tearoom, a gift shop, several Welsh-style Victorian buildings, and a Welsh-style steam-powered narrow gauge train that circles the resort.

The lawsuit stemmed from a complaint received from a family that had booked a four-week summer vacation at Wales West to spend quality time together while the father commuted to nearby Mobile to continue his ongoing cancer treatments. Wales West was selected because of its lake and train and because it is near Mobile. On the day they arrived, the mother casually

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FOUR UNIVERSITIES AGREE NOT TO USE ELECTRONIC BOOK READERS UNLESS THEY ARE MADE ACCESSIBLE FOR PEOPLE WITH VISION DISABILITIES

On January 13, 2010, Case Western Reserve University in Cleveland, Ohio, Pace University in New York, New York, and Reed College in Portland, Oregon, entered into agreements with the Justice Department concerning the use of electronic book readers in classroom settings. The universities agreed generally not to purchase, recommend, or promote use of the Kindle DX, or any other dedicated electronic book reader, unless the devices are fully accessible for students who are blind or have low vision.

These universities are participating in a pilot project in cooperation with Amazon.com, Inc., to test the viability of using the Kindle DX -- a handheld electronic device for reading books -- in a classroom setting. The terms of their agreements will

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(RV resort, continued)

mentioned to a staff person that their 2-year old child had HIV. Later that day the manager appeared and told the parents that the child could not use the swimming pool or showers. The family was so upset that they checked out of the resort early the next morning.

In the settlement, the resort agreed to pay \$36,000 to the family and a \$10,000 civil penalty to the United States for discriminating against the family. Wales West also agreed to adopt non-discrimination policies and train staff on the ADA.

“Ensuring that individuals with disabilities are not subjected to discriminatory, stigmatizing treatment based on unfounded fears and stereotypes is critically important. The ADA protects individuals with HIV and other disabilities from this kind of discrimination,” said Assistant Attorney General Thomas E. Perez.

“Our office is dedicated to providing equal protection of the laws by ensuring equal access to accommodations for those with impairments or disabilities,” said Kenyen R. Brown, U. S. Attorney for the Southern District of Alabama. “Whether it is discrimination against families in a mobile home park, improper lending practices at a bank or other issues regarding fairness, we fully intend to bring cases each time we learn of wrongful discrimination.”

(book readers, continued)

become effective at the end of the pilot project. The universities further agreed that if they use dedicated electronic book readers in the future, they will ensure that students with vision disabilities are able to access and acquire the same materials and information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.

These agreements follow a January 11, 2010, agreement between Arizona State University, the Department, the National Federation of the Blind, and the American Council of the Blind concerning electronic book readers.

The Kindle DX currently has a text-to-speech function that makes a book’s contents accessible to blind individuals, but does not have a text-to-speech function for the menu and navigation controls. Without access to the menus, students who are blind have no way to know which book they have selected or how to access the Kindle DX Web browser or other functions. Other universities, including Syracuse University in Syracuse, New York, and the University of Wisconsin at Madison, have examined the utility of the Kindle DX as a teaching device and have decided not to use it until it is accessible for blind individuals.

“Advancing technology is systematically changing the way universities approach education, but we must be sure that emerging technologies offer individuals with disabilities the same opportunities as other students,” said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. “These agreements underscore the importance of full and equal educational opportunities for everyone.”

CALIFORNIA SHERIFF’S OFFICE WILL PROVIDE EFFECTIVE COMMUNICATION FOR PEOPLE WITH DISABILITIES

On February 2, 2010, the Alameda County (California) Sheriff’s Office entered into a settlement agreement with the Department agreeing to provide sign language interpreters or other communication aids and services at county jails when needed by arrestees, detainees, suspects, victims, witnesses, complainants, or visitors who are deaf, hard of hearing, or deaf and blind. This agreement resolves a complaint from a person who is deaf and blind who alleged that he was never provided a tactile interpreter when arrested and incarcerated at the one of the county jails. In tactile interpreting, a deaf-blind person puts his hands on the interpreter’s hands while the interpreter makes signs.

DEPARTMENT FILES BRIEFS IN TWO STATES TO ENFORCE SUPREME COURT'S *OLMSTEAD* DECISION

On December 21, 2009, the Department filed a motion to participate as *amicus curiae* – or friend of the court – and a brief in support of the position taken by North Carolina's protection and advocacy (P & A) agency, Disability Rights North Carolina, in an ADA lawsuit filed against the State of North Carolina in the federal court in Raleigh on December 11. The lawsuit, *Marlo M., et al. v. Cansler, et al.*, alleges that the State's decision to terminate state funding for two individuals with mental illness and developmental disabilities who had been living in the community for long periods of time (10 years and 5 years, respectively) puts them at imminent risk of institutionalization in violation of the *Olmstead* decision and the ADA's integration mandate. The Department's brief urged the court to grant the P & A agency's motion for preliminary injunction. The court granted the motion after a hearing on December 28, 2009.

On January 26, 2010, the Department filed a brief in *Ligas v. Maram*, an *Olmstead*-type class action lawsuit against the State of Illinois

that was filed in the federal court in Chicago in 2005. The plaintiffs allege that the State has failed to provide sufficient community-based services to enable individuals with developmental disabilities to live in community settings and instead relies on large, privately-run congregate care institutions. Previously, the parties had proposed a consent decree, but the court rejected it and decertified the class after objectors raised concerns that individuals who want to remain in institutional

settings would be forced into community placements under the terms of the decree. On January 25, 2010, the parties filed a joint motion to certify a more limited class of individuals – those who want to live in a community placement – and submitted a revised consent decree. The Department's brief urged the court to certify the revised class and provisionally approve the consent decree, pending a hearing to give individuals affected by the decree an opportunity to comment on it.

DEPARTMENT SUPPORTS PLAINTIFFS IN ZONING LAWSUIT

On December 30, 2009, the Department filed a motion to participate as *amicus* in *Sacred Heart Rehabilitation Center, Inc. v. Richmond Township and Richmond Township Planning Commission*. This lawsuit was filed on May 14, 2008, in the federal court in Detroit, Michigan, alleging that the township's denial of a special land use permit for Sacred Heart -- which restricts the organization's ability to use its Richmond facility to treat individuals with addictive disorders -- violates the ADA, the Rehabilitation Act, and the Fair Housing Act. The Department's motion was granted on January 4, 2010, and the next day the Department filed a brief disputing the township's claims that Sacred Heart does not have the right to proceed with its claims or, alternatively, is obliged to exhaust state administrative remedies before proceeding with these claims in federal court.

TWO MULTI-FAMILY HOUSING COMPLEXES WILL BE RETROFITTED FOR ACCESSIBILITY

On January 29, 2010, the federal court in Davenport, Iowa, approved a consent decree settling the Department's Fair Housing Act lawsuit against the designers, builder, and owners of two multi-family housing complexes in Davenport.

Under the settlement, the defendants will make the apartment complexes accessible to people with disabilities. The retrofitting will include reconfiguring bathrooms and kitchens, widening doorways, creating accessible routes to building entrances, and providing accessible parking for residents and guests.

In addition, the builder and owners will pay up to \$40,000 to compensate individuals harmed by the lack of accessible housing. The settlement also requires all the defendants to undergo training on the requirements of the Fair Housing Act and provide periodic reports to the government.

"Accessible housing is not just a civil right for individuals with disabilities, it is a basic necessity," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "This settlement ensures that persons with physical disabilities have an equal opportunity to live in and visit these complexes."

"Designing accessible housing is a simple step that can have a big impact on the lives of persons with disabilities," said Nicholas A. Klinefeldt, U.S. Attorney for the Southern District of Iowa. "We are committed to the principle that all Americans, including those with disabilities, deserve the opportunity to enjoy fair housing in their community."

Ensuring that homes are designed and built to provide access for people with disabilities is the law. Today's settlement demonstrates what can be done when government and private actors work together to enforce the law

and produce results," stated John Trasviña, HUD Assistant Secretary for Fair Housing & Equal Opportunity.

The complexes involved are the Kimberly Ridge Manor and the Jersey Ridge Manor. Anyone who believes he or she may have been harmed by the lack of accessible housing at one of these complexes should contact the Justice Department at 1-800-896-7743, and select menu option 9992.

This case arose from complaints that the Davenport Civil Rights Commission filed with the U.S. Department of Housing and Urban Development (HUD). After investigating, HUD referred the matter to the Justice Department, which filed the lawsuit in September 2009. (See previous article in issue # 33.)

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program uses professional mediators who are trained in

the legal requirements of the ADA and has proven effective in resolving complaints at less cost and in less time than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

In this issue, we highlight complaints from people who use service animals that have been successfully mediated:

(Mediation, continued)

- In Texas, an individual who is blind alleged that a chain fast food restaurant refused to serve her because she uses a service animal. The company agreed to expand the scope of the mediation to cover all of its 120 restaurants in Texas and California. The company developed a service animal policy, included a copy of the policy in its training manual for distribution to all employees, and installed signs in its stores stating “Service Animals Are Welcome.”
- In Nevada, an individual with a mobility disability alleged that a medical transport organization refused to allow her to travel without providing written documentation that her dog was a service animal. The organization changed its policy and established procedures to ask only the nature of the service provided by an animal.
- In Arkansas, a person who is blind complained that a Mexican restaurant refused to serve him because he uses a service animal. The restaurant agreed to serve customers who use service animals and posted a “Service Animals Welcome” sign. Additionally, the restaurant owner wrote an article on service animals and the ADA which was published in a Spanish language newspaper and donated \$1,000 to an animal shelter.
- A husband and wife who are blind and use service animals alleged that a Pennsylvania cab driver refused to provide service to them. The cab company highlighted its existing nondiscrimination policy, added a statement to its training manual requiring all drivers to transport individuals with service animals, and distributed the revised manual to its drivers.
- In Georgia, a person with a disability complained that security personnel forced him to leave a shopping mall because he uses a service animal for mobility assistance and seizure detection. The mall reaffirmed its policy of allowing service animals, trained its security personnel about service animals and the ADA, added materials on service animals to its employee manual, and paid the complainant \$7,000.
- In Michigan, an individual who has a seizure disorder complained that she was denied access to a doctor’s office because she uses a seizure alert animal. The practice modified its policy to allow service animals to accompany individuals throughout the medical practice, trained its employees on the new policy, and wrote a letter of apology to the complainant.
- An individual with a mobility disability complained that she was denied access to three mental health hospitals because she uses a service animal for balance. The company that operates these hospitals, located in Missouri, Louisiana, and Texas, changed its policy and developed procedures to allow service animals to accompany individuals with disabilities throughout its facilities.
- In North Carolina, an individual with a mobility disability complained that he was denied access to a grocery store because he uses a service animal for balance. The company agreed to expand the scope of the mediation to cover all stores in the grocery chain nationwide. The company changed its policy, developed procedures to allow service animals, posted them on the nationwide employee website, and incorporated them into its corporate policy manual. Additionally, the company posted signage stating “Service animals welcome, no pets please” in more than 1,300 stores in 11 states.

RECENT OUTREACH ACTIVITIES

- On January 24, staff gave a presentation on the ADA at the American Corrections Association Winter Workshop in Tampa, Florida. The conference is attended by state, county, local, and private corrections administrators, law enforcement officials, doctors and other health care professionals, and architects.
- On January 26, staff provide training on the requirements of title VI of the Civil Rights Act, title IX of the Education Amendments Act, and Section 504 of the Rehabilitation Act for staff of the National Aeronautics and Space Administration (NASA) in Washington, DC. The training was for NASA's civil rights compliance staff, who carry out the agency's efforts to ensure that organizations that receive federal financial assistance from NASA comply with these antidiscrimination laws.
- On January 28, a staff member was the keynote speaker at the Texas Registered Accessibility Specialist Association (TRASA) annual meeting in Austin, Texas. This organization provides training for its members, who are registered with the State and conduct accessibility surveys. Approximately 150 people attended the meeting.
- On February 4, staff gave a presentation at a meeting of city government officials, business organizations, and individual business owners in Gettysburg, Pennsylvania, sponsored by State Representative Mike Moul with assistance from Congressman Tom Platts. The presentation addressed ADA requirements for small businesses, including readily achievable barrier removal, historic preservation issues, and the complaint process.
- On February 19, staff gave a presentation at the Frederick Chamber of Commerce's New Media and Technology Conference, held on the Frederick campus of Mt. St. Mary College in Frederick, Maryland. The presentation addressed how to make online social media and outreach activity -- including websites, videos, photos, blogs, social network profiles, and other outreach media -- accessible for people with visual and hearing disabilities.
- On February 22, staff gave a presentation in Washington, DC, for the Directors of the regional DBTAC - ADA Centers. The purpose was to update the Directors on recent ADA activities and answer their questions.
- On February 24, 2010, at the National Leadership Summit on Emergency Management and Assistive Technology Reutilization in Washington, DC, staff moderated and participated in a panel discussion on the requirements of the ADA and Section 504 of the Rehabilitation Act and serving the needs of people with disabilities in civil emergencies. The summit was organized by the Pass It On Center (which promotes the re-use of assistive technology) and the Institute on Disabilities at Temple University to bring together national emergency management leaders, disability leaders, and assistive technology providers to discuss the current status and future role of assistive technology reutilization in emergency management.